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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,236	04/04/2005	Shunji Mitsuyoshi	37026-88082	1272
22807 7590 07/31/2009 GREENSFELDER HEMKER & GALE PC SUITE 2000 10 SOUTH BROADWAY ST LOUIS, MO 63102				
EXAMINER				
LERNER, MARTIN				
ART UNIT		PAPER NUMBER		
2626				
MAIL DATE		DELIVERY MODE		
07/31/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/530,236

Applicant(s)

MITSUYOSHI, SHUNJI

Examiner

MARTIN LERNER

Art Unit

2626

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1 to 6.
Claim(s) objected to: _____.
Claim(s) rejected: 7 to 9.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Martin Lerner/
Primary Examiner, Art Unit 2626

Continuation of 11, does NOT place the application in condition for allowance because:

The Specification, Page 12, Line 15 to Page 13, Line 1, is being reconsidered as requested by Applicant, but does not overcome the rejection. There is complete agreement for the fact that the Specification discloses a computer program, and that the computer program is disclosed to be run on a computer, and even that the program is associated with the computer. The problem arises as to whether Applicant can claim "a computer readable medium" given what is disclosed by the Specification. Moreover, the limitation of "stored on a computer" is problematic both because the limitation does not clearly satisfy the requirement of a "computer readable medium" for purposes of 35 U.S.C. §101 in accordance with the policy of the USPTO, and because it is unclear whether there is express support for the limitation of "stored in a computer" in Applicant's Specification so as to satisfy 35 U.S.C. §112, 1st ¶. Applicant's position ultimately rests upon simply saying that the computer readable medium is "implied" or "inherent". The implied or inherent aspect of a computer readable medium is what is not persuasive. If Applicant were permitted to prevail on an argument that a computer readable medium is implied or inherent, then there would appear to be no point to the USPTO's requirement because then any Applicant could simply argue that the computer readable medium is implied or inherent. Nor does there appear to be any way for the Examiner to make a suggestion for language that can save claims 7 to 9 because the lack of disclosure of a computer readable medium is a basic defect of the original Specification. Applicant could file a Continuation-in-Part to add disclosure of a computer readable medium, and claim the computer readable medium in claims of the Continuation-in-Part. Given, however, that the majority of the significant claims are already allowed, and while it is understood that Applicant wishes to provide coverage for any potential sale of a computer readable medium embodying the program, it is not seen why Applicant persists in resisting cancellation at this time of claims 7 to 9, which appears to be the only reasonable option.